IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.12.2007

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1396 of 2007

G.Vijayavarman .. Petitioner

Vs.

1. The State of Tamilnadu
   rep. by its Secretary to Government
   Department of Prohibition & Excise
   Fort St.George, Chennai-9.

2. The District Magistrate
   and District Collector
   Tiruvannamalai District
   Tiruvannamalai. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus Call for the records relating to the detention order in D.O.No.39/2007-C2 dated 29.8.2007 passed by the 2nd respondent and quash the same and direct the respondents to produce the Corpus of the detenue namely Santhakumar S/o Gunasekaran, residing at Punalkadu Village (Colony), Aadaiyur Post, Tiruvannamalai Taluk & District (Now Detained in Central Prison) Vellore), before this Court and set him at liberty.

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For Petitioner : Mr.S.Kumaradevan

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Santhakumar, brother of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2.1. The order of detention dated 29.8.2007 came to be passed by the second respondent on the basis of the ground case in Crime No.301 of 2007 on the file of Tiruvannamalai Taluk Police Station for the offences punishable under Sections 4(1)(i) read with 4(1)(aaa) read with 4(1-A)(ii) of the Tamil Nadu Prohibition Act, complaint of which was given by one Rajini. According to the complainant, on 31.7.2007, when he consumed arrack purchased from the detenu, he felt giddiness and burning sensation in his eyes, throat and stomach. Suspecting that some poisonous substance was added by the detenu to increase the effect of intoxication, he preferred a complaint as referred to above, based on which the Inspector of Police and police party, went to the location, found the detenu selling arrack, apprehended him and seized the contraband. The samples were sent for chemical analysis and report reveals that the sample of arrack contained 6.7%mg of Atropine per 100 ml, and the same would endanger life.

2.2. Apart from the above, the detaining authority also took note of four adverse cases pending against the detenu, viz., Crime Nos.8 of 2006 and 158, 299, and 250 of 2007 on the file of Tiruvannamalai Taluk Police Station for the offences punishable under Sections 4(1)(i) and 4(1)(aa) of the Tamil Nadu Prohibition Act.

2.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

3. Challenging the said detention, the brother of the detenu has preferred this Habeas Corpus Petition seeking a writ of habeas corpus to direct the respondents to produce the detenu, now confined in Central Prison, Vellore, before this Court and to call for the records of the respondents relating to the order of

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detention vide proceedings D.O.No.39/2007-C2, dated 29.8.2007, to set aside the same and to set the detenu at liberty.

4. The learned counsel for the petitioner inviting our attention to the grounds of detention wherein it is stated that the Doctor attached to the Government Hospital, Tiruvannamalai examined the complainant on 31.7.2007 and issued a drunkenness certificate on the said date, and the statement given by the Doctor found at page 25 of the booklet furnished to the detenu, wherein it is stated that the complainant was examined on 4.8.2007, contends that this contradiction as to date of examination of the complainant was not properly appreciated by the detaining authority and therefore, the order of detention suffers on the ground of non application of mind.

5. We heard Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents and perused the records.

6. In the grounds of detention dated 29.8.2007 at paragraph 3 (c) it is stated that the complainant was referred to the Government Hospital, Tiruvannamalai for treatment and the duty doctor examined him at 10.30 hours on 31.7.2007 and issued a drunkenness certificate in this regard. Whereas, in the statement given by the Doctor found at page 25 of the booklet furnished to the detenu, it is stated that the complainant was examined by him on 4.8.2007, which, in our considered opinion, belies the issuance of drunkenness certificate to the complainant on 31.7.2007, which was in turn referred to and relied on by the detaining authority. The non consideration of the said vital aspect vitiates the detention order.

For the reason aforesaid, the impugned order of detention is vitiated and as such, the same is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 29.8.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1. The Secretary to Government
   State of Tamilnadu
   Prohibition and Excise Department
   Fort St.George, Chennai-9.

2. The District Collector
   and District Magistrate
   Tiruvannamalai District
   Tiruvannamalai.

3. The Superintendent of Central Prison,
   Vellore.

4. The Joint Secretary
   to the Government of Tamil Nadu,
   Public (Law and Order) Department,
   Fort St George, Chennai 9.

5. The Public Prosecutor
   High Court, Madras.

+ 1 cc to Mr. S. Kumaradevan, Advocate SR No. 72177

ASM(CO)
SR/4.1.2008

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